

Order

Michigan Supreme Court
Lansing, Michigan

October 17, 2008

134437

KENT A. MCNEIL, FRANKLIN E. FISHER,
ROGER GRIFFIN, SCOTT WAY, and JEFF
LEGATO,

Plaintiffs-Appellants,

v

CHARLEVOIX COUNTY and NORTHWEST
MICHIGAN COMMUNITY HEALTH
AGENCY,

Defendants-Appellees.

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SC: 134437
COA: 272410
Charlevoix CC: 05-088120-CZ

By order of May 2, 2008, the parties were directed to file supplemental briefs. On order of the Court, the supplemental briefs having been received, the application for leave to appeal the June 5, 2007 judgment of the Court of Appeals is again considered, and it is DISMISSED as to those plaintiffs who lack standing (Franklin E. Fisher, Kent A. McNeil, and Roger Griffin). The application is GRANTED as to the remaining parties. The parties shall consider: (1) whether the local health department or the county board of commissioners, the entity vested with final authorization of the regulation, MCL 333.2441(1), can create a right or private cause of action against a private entity that alters Michigan's at-will employment doctrine; (2) whether the right or private cause of action created by Clean Indoor Air Regulation § 1001 falls within the exceptions set forth in *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692 (1982), to Michigan's at-will employment doctrine; and (3) whether the exceptions to Michigan's employment at-will doctrine set forth in *Suchodolski* on the basis of "public policy" are consistent with this Court's decision in *Terrien v Zwit*, 467 Mich 56 (2002).

The Clerk of the Court is directed to place this case on the January 2009 session calendar for argument and submission. Appellants' brief and appendix must be filed no later than November 24, 2008, and appellees' brief and appendix, if appellees choose to submit an appendix, must be filed no later than December 18, 2008.

The Attorney General, the Michigan Townships Association, the Michigan Association of Counties & Michigan Association for Local Public Health, and Peter C. Venlet, in pro per, are invited to file briefs amicus curiae, to be filed no later than December 30, 2008. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae, with such briefs to be filed no later than December 30, 2008.

MARKMAN, J., (*concurring*).

I concur in the order granting leave to appeal. However, I would direct the parties to also address the issue whether, under relevant legal and constitutional principles, MCL 333.2441(1) properly delegates authority to Charlevoix County and the Northwest Michigan Community Health Agency to promulgate the regulations at issue in this case. See, e.g., *Taylor v Gate Pharmaceuticals*, 468 Mich 1, 10 n 9 (2003); *Blue Cross & Blue Shield of Michigan v Governor*, 422 Mich 1, 51 (1985).

CAVANAGH and KELLY, JJ., would deny leave to appeal.

WEAVER, J., would deny leave to appeal because she is not persuaded that the questions presented should be reviewed by this Court.



s1015

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 17, 2008

Corbin R. Davis

Clerk